IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10031 of 2000
With
SPECIAL CIVIL APPLICATION No. 10037 of 2000
With
SPECIAL CIVIL APPLICATION No. 10040 of 2000
With
SPECIAL CIVIL APPLICATION No. 10041 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GARDEN SILK MILLS LTD - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner No(s).: 1.

MR KL PANDYA AGP for Respondent No(s).: 1.
RULE SERVED for Respondent No(s).: 2,3.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 28/06/2005

ORAL JUDGMENT

1.0 The petitioner Mill has challenged the order dated 27.04.2000 passed by the Labour Court, Surat below application exh.9 in Reference (LCS) No.64/1995, 66/1995, 63/1995 and 65/1995, whereby the preliminary objections were not decided.

2.0 The petitioner herein is a Silk Mill registered under the Indian Companies Act and the service conditions of the employees of the petitioner Mill are governed under the provisions of the B.I.R. Act. Respondents no.3 herein were working as Salesmen in the petitioner Mill.

2.1 It is the case of the petitioner that respondents no.3 herein had committed serious misconduct of mis-appropriation of the funds of the petitioner Mill, and therefore, the petitioner Mill decided to hold departmental proceedings against them. Considering the seriousness of the misconduct and apprehending departmental action and to avoid departmental proceedings, on 03.01.1994, respondents no.3 voluntarily resigned from service and requested the petitioner to pay their legal dues. Accordingly, the resignation of respondents no.3 were accepted and the petitioner paid all the legal dues of respondents no.3 herein.

2.2 Thereafter, respondents no.3 sent approach letter as contemplated u/s.42(4) of the B.I.R. Act read with Rule 53 claiming reinstatement in service with full back wages. Since no agreement was arrived at between the petitioner

and respondent no.3, he filed Applications before the Labour Court, Surat challenging the propriety and legality of their termination orders. Simultaneously, they also approached the Assistant Labour Commissioner against the said termination order under the provisions of the Industrial Disputes Act, 1947 claiming reinstatement with full back wages. The said dispute was ultimately referred to the Labour Court for adjudication by way of reference being Reference (LCS) No.64 of 1995.

2.3 On 02.02.2000, respondents no.3 herein filed pursis in the said T-Applications, praying for withdrawal of the T-Applications on the ground that References under the I.D. Act had already been referred and pending. The Labour Court under the provisions of the B.I.R. Act, by order dated 02.02.2000 permitted respondents no.3 to withdraw the said T-Applications. The Labour Court by impugned order dated 27.04.2000 refused to decide the preliminary objections about the maintainability of the references and decided to hear the References at the final disposal of the reference. The petitioner Mill being aggrieved by the said order dated 27.04.2000 has preferred this petition before this Court.

3.0 Mr. D G Chauhan learned advocate for the petitioner has contended that the petitioner Mill is governed by the provisions of the Bombay Industrial Relations Act and that by Notification dated 15.07.1961, all the provisions of the B.I.R. Act were made applicable to the petitioner Mill by the State Government. He has submitted that the service conditions of the employees of the petitioner Mill are regulated by the Standing Orders framed under the B.I.R. Act.

3.1 He has submitted that respondent no.1 & 2 herein have no jurisdiction u/s.10(1) of the Industrial Disputes Act, 1947 to refer the dispute to the Labour Court for adjudication under the provisions of the Industrial Disputes Act, 1947 since the dispute in question shall be governed under the provisions of the B.I.R. Act. He has, therefore, submitted that the Labour Court under the Industrial Disputes Act, 1947 has no jurisdiction to adjudicate and decide the References.

4.0 Though served none appears for respondents no.2 & 3 in all the petitions. I have heard learned counsel for the petitioner and perused the documents placed on record. From the document placed at Annexure-D to the petition, it transpires that the petitioner Mill is governed under the provisions of the B.I.R. Act and the service conditions of the employees of the petitioner Mill are regulated by the Standing Orders framed under the said Act. Hence, it is clear that respondents no.1 & 2 herein have no jurisdiction u/s.10(1) of Industrial Disputes Act, 1947 to refer the dispute in question to the Labour Court under the provisions of the Industrial Disputes Act, 1947. Therefore, the Labour Court has committed an error by exercising powers under the Industrial Disputes Act, 1947.

5.0 In above view of the matter, these petitions are allowed. The impugned order of the Labour Court, Surat dated 27.04.2000 passed below application exh.9 in Reference (LCS) No.64/1995, 66/1995, 63/1995 and 65/1995 are quashed and set aside. The Labour Court, Surat is directed to hear the preliminary objection regarding jurisdiction first and shall dispose of the same within a period of six months from the receipt of writ of this

order. With the above direction, the petitions stands disposed of. Rule is made absolute to the aforesaid extent in all the petitions with no order as to costs.

(K. S. JHAVERI, J.)

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